IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.1062 OF 1999

1. Nagalakshmi Finance
Investments Consultants

2. Ramesh Babu
3. R.R.Sridharan .. Appellants

-Vs-

State
rep. by the Sub Inspector of Police
Crime Branch
Egmore
Chennai-8 .. Respondent

This criminal appeal is preferred under Section 374 of Cr.P.C.
against the judgment dated 12.11.1999 made in C.C.No.2 of 1998 on the file of the learned Special Judge, TNPID Cases, Chennai.

!For Appellants : Mr.K.Jayakumar

^For Respondent : Mr.O.Srinath,
Govt. Advocate(Crl. side)

:JUDGMENT
This is an appeal made by A1 to A3, who stood charged and tried along with A4 under Sections 120 B r/w 420, 409, 109 IPC and Section 5 of the TNPID Act. The appellants were found guilty under Section 420 IPC and Section 5 of TNPID Act. A1 was directed to pay a fine of Rs.1 lakh through A2, while A2 and A3 were convicted for 420 IPC and sentenced to undergo 3 years RI and to pay a fine of Rs.50000/- in default six months RI and for the section 5 of TNPID Act to undergo 10 years RI and to pay a fine of Rs.1 lakh in default one year RI and both the sentences to run concurrently. The trial court acquitted the fourth accused of all the charges levelled against her. During the pendency of this appeal, A3 died, and hence, insofar as A3 is concerned, the appeal becomes abated. Thus, this appeal is prosecuted only by A1 Financial Institution and A2.
2. The short facts necessary for the disposal of this appeal can be stated thus:

a) P.W.1 Narasimhan was an Assistant in the office of the Directorate of Fisheries Development. A3 was the Superintendent in the same department and he was running Nagalakshmi Finance Institution. A2 Ramesh Babu is the son of A3. P.W.1 Narasimhan, PW4 Jayalakshmi, PW5 Gowrieswari, PW6 Sarojam, PW7 Megala, PW8 Santhakumari, PW9 Premakumari, PW10 Kasi, and PW11 Renganathan have deposited amounts under Fixed Deposit scheme. Fixed deposit receipts have been issued to them under Exs.P1, P2, P3, P5, P6, P16, P17, P18, P19, P21 P24, P25, P27, P30, P31 , P34, P38 and P40. P.W.1 Narasimhan, PW4 Jayalakshmi, PW9 Premakumari, PW12 Sundaramurthy, PW13 Revathy, PW14 Renugadevi and PW15 Rajalakshmi have made deposits under recurring deposit scheme. The passbooks have been issued under Ex.P8, P22, P28, P32, P37, P46, P48, P51 and P52. PW1, PW4, PW6, PW7, PW8, PW9, PW10, PW11, PW12, PW13, PW14 and PW15 had preferred complaints under Ex.P9, P5, P23, P29, P33, P36, P39, P45, P47, P49, P50 and P53. PW2 Kumaresan has spoken to the fact that he was present when A3 was being enquired by the police in his shop and has also spoken about the search of the house of A3 and signatures have been marked as Exs.P.10 and P.11. PW3 Sriramajeyam has also spoken about the enquiry of A3 and the search of his house and they have been marked as Exs.P.12 and P.13. PW3 has also attested to the confessional statement of A3. PW16 Malini, PW17 Vijayalakshmi, PW1 8 Padmini, PW19 Syed Hamanullah, PW20 Shakila Begum, PW21 S.Rajam, PW22 Janaki, PW23 Kuppabai, PW24 Sivagami, PW25 Chandra, PW26 Vinothini, PW27 Balaraman, PW28 Selvabooshnam, PW29 Agnes Durairaj, PW30 Ida Durairaj, PW31 Shanthi, PW32 Mohanraj, PW33 Dorthi S.Raj, PW34 V. Seethalakshmi, PW35 Hanna Anand, PW36, Anbazhagan, PW37 Gopala Krishnan, PW38 Shanthi, PW39 Shanthakumari, PW40 Dhamodharan, PW41 Lalitha, PW4 2 Saraswathi, PW43 Lakshmi Kanthammal, PW44 Voilet Shantha, PW45 Savithiri, PW46 Malliga, PW47 Jamuna Achari, PW48 Kuppanna Achari, PW49 Sumathy, PW50 Mathivanan, PW51 Balamurali, PW52 N.Kannan, PW53 Saraswathy, PW54 Rajan, PW55 Abiramasundari, PW56 K.Natarajan, PW57 Ghandhimathi, PW58 Hyder Aliyar Begum, PW59 G.Nagarajan, PW60 Subbulakshmi, PW61 Dhanalakshmi, PW62 Suseela, PW63 Girija, PW64 Srinivasan, PW65 Vijayakirubakaraju, PW66 Jayaraman, PW67 Shakileswari, PW68 Padmanabhan, PW69 Thirusooli, PW70 Pechiammal, PW71 Rangarajan, PW72 Ponnambalam, PW73 Loganayaki, PW74 Mohanabai, PW75 Lalitha Kumari, PW76 Padmini, PW77 Suseelabai, PW78 Saraswathy, PW79 Kalyani, PW80 Srinivasan, PW8 1 Samshia Begum, PW82 Jayalakshmi, PW83 Dhanamani and PW84 Vidya Nagarajan have deposited money under various schemes with A1 institution.

b) On the strength of the complaint given by P.W.1 on 14.2.1997 at about 7.30 p.m., P.W.85 S.Suryanarayanan, Sub Inspector of Police (Crimes), Periamedu formerly Sub Inspector of Police in Central Crime Branch, Egmore had registered a case in Crime No.200 of 1997 under Sections 120B and 409 IPC. F.I.R. was marked as Ex.P.350. A3 was arrested and produced. His statement was recorded. A search of the house of A3 was done on 15.2.1997 at 10.00 a.m., which was situated at No.6, Lloyds Colony, Government Quarters. In the presence of P.Ws.2 and 3 the documents were seized. The properties recovered were produced before the 11th Metropolitan Magistrate, Chennai. A3 was also produced before the said Court and was remanded to judicial custody.

c) On 1.3.1997, A2 was arrested at Thillai Nagar, Trichy and produced before the 11th Metropolitan Magistrate, Madras on 2.3.1997. The Investigating Officer examined P.W.1 and 107 witnesses and recorded their statements. He seized the documents of Fixed Deposit Receipts and perused the records pertaining to the fixed deposits. All the pamphlets making

advertisement as to the benefits to the depositors by A1 Firm, namely Exs.P.352, 353 and 354 and Ex.P.355 visiting card bearing the name of A2 were recovered and produced before the Court. Further investigation was taken up by P.W.86 Krishnamoorthy, who verified the earlier investigation and laid a charge sheet against A1 to A4 under Sections 120 B, 409, 420 IPC and Section 5 of TNPID Act.

3. In order to prove the charges levelled against the accused, the prosecution examined 86 witnesses and marked 355 exhibits. No material objects were produced. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. A2 and A3 admitted that amounts were collected under Fixed deposit scheme and other schemes in the name of A1. But, it cannot be repaid in time, since they could not recover the amounts from the persons to whom it was advanced. On the side of the defence, four documents were filed. On consideration of the rival submissions and scrutiny of the available materials, the trial court found A1 to A3 guilty of the offence referred to above and sentenced to pay fine and imprisonment as stated above, while A4 was acquitted of all the charges levelled against her.

4. Advancing his arguments on behalf of the appellants, Mr.K. Jayakumar, the learned counsel inter-alia made following submissions for consideration by this Court.

The trial court has found the appellants guilty without proper appreciation of the evidence adduced by the prosecution. The lower court has thoroughly failed to see that the complainants, who were depositors, have preferred complaints even before the maturity date of the respective deposits. Under the deposit agreement, the appellants were liable to pay the deposit money only on the maturity of the same. There was no prior enmity between P.W.2 and P.W.3 with the accused. The lower court has failed to note the prior enmity, which was suggested at the time of cross examination of the said witnesses. There were number of irregularities, which were elicited at the time of cross examination of the Investigating Officer, but the lower court has not taken note of the same. The lower court has not discussed the evidence of the individual witnesses and given a separate finding. There was no iota of evidence to indicate that the accused Nos.2 and 3 have cheated the public and no one of the ingredients under Section 420 of I.P.C. was proved. It is pertinent to note that the interests on the deposits were continuously paid without any default till the time of the complaints that were made. Under such circumstances, the conviction under Section 5 of TNPID Act was not warranted. In the absence of any evidence, it cannot be held that the accused No.2 was the Managing Director and Accused No.3 was the Manager of the Firm. While the lower court has acquitted the fourth accused, it should not have convicted A1 to A3 on the basis of the same evidence.

5. Added further the learned counsel that it remains to be stated that some of the prosecution witnesses have deposed that they have received high rate of interest from the accused in time; that the lower court has awarded maximum punishment of 10 years under Section 5 of TNPID Act to the second accused, who was a student; that there is evidence to show that he was not even seen by some of the witnesses; that collection was not actually made by him; and that he was acting only as puppet in the hands of the third accused and in view of the reasons stated above, the judgment of the lower

court has got to be set aside.

6. Strongly opposing the contentions put forth by the appellants' side, the learned Government Advocate (Criminal side) would submit that the second accused has categorically admitted that he was the Managing Director, while the third accused, who was a Government employee, was acting as Manager to collect the money by way of Fixed deposits making the public believe that they will give high rate of interest and by way of recurring deposits also; that the said fact was never disputed by the accused during trial; that it is also not in dispute that those amounts were not repaid at all, which necessitated the witnesses to lodge complaints; that at the time of investigation, all the depositors one after another gave complaints; that all the documents were seized and they have been placed before the lower Court; that in view of the evidence available, the lower court has taken a view that in the name of the Financial Institution, A2 as Managing Director and A3 as Manager have made public believe by their misrepresentation and collected amounts and thus the provisions under Section 420 IPC and Section 5 of TNPID Act were attracted; that it is pertinent to note that A2 was acted as Managing Director during the relevant period, which fact was also admitted by him at the time of questioning under Section 313 of Cr.P.C., and hence, the judgment of the lower court has got to be sustained.

7. A careful consideration of the rival submissions and a careful analysis of the entire materials available would lead to the irresistible conclusion that the trial court was perfectly correct in recording a conviction against the second accused under Section 420 IPC and Section 5 of TNPID Act.

8. Admittedly, the first accused, Nagalakshmi Finance Investments Consultants, situated at D.No.6, Lloyds Colony, Royapetah, Chennai, was a Finance Institution, which was collecting amounts from the public under fixed deposit scheme and recurring deposit scheme, in respect of which voluminous advertisements have been made representing the public stating that they will give high rate of interest at 21% and above. From the admission made by the second accused, it would be clear that even gold coins were distributed in order to attract the public at the first instance. During the relevant period, Accused No.2, who was a student, has acted as Managing Director. A perusal of the fixed deposit vouchers, which were collected at the time of investigation, would clearly show that the second accused has signed as Managing Director of the first accused Financial Institution.

9. It remains to be stated that at the time of questioning under Section 313 Cr.P.C., the accused No.2 has admitted that he was the Managing Director. He also admitted that the amounts were collected from the witnesses. He adduced some reasons why it could not be repaid. The prosecution examined the said witnesses, who have categorically spoken to the fact that they have made deposits with the first accused Financial Institution and the collections were made by A2 and A3. In view of the evidence available and in view of the admission made by A2, it would be too late for the appellants' side to state that A2 had nothing to do either with the dealings or collections of money so made. From the available evidence it would be clear that only by making misrepresentation of fabulous interest rate and

making distribution of gold coins and also by issuing pamphlets for making deposits in their favour, the accused Nos.2 and 3 have attracted the public. It is heartrending that the accused No.3, who himself was a Government employee, has collected money from number of staff of the same department and also from different departments, which includes retired persons and pensioners also. It is not in dispute that the amounts collected by way of fixed deposits and recurring deposit were not at all paid. It would be more appropriate to reproduce Section 5 of TNPID Act.

"Default in Repayment of deposits and interests honouring the commitment Notwithstanding anything contained in Chapter II, where any Financial Establishment defaults the return of the deposit or defaults the payment of interest on the deposit, every person responsible for the management of the affairs of the Financial Establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh of rupees and such Financial Establishment is also liable for fine which may extend to one lakh of rupees."

From a reading of Section 5 of TNPID Act, it would be quite evident that the accused Nos.1 to 3 had committed offence attracting the ingredients as required under Section 5 of TNPID Act. As stated above, only by making misrepresentation, the accused obtained moneys from the public by way of fixed deposit and recurring deposit, and thus, without any hesitation whatsoever, the judgment of the lower court has got to be confirmed.

10. Coming to the question of punishment, A1 was directed to pay a fine of Rs.1 lakh through A2. This Court is unable to notice anything to interfere in the said sentence. As pointed out above, insofar as A3 is concerned, he died, and hence the appeal becomes abated as against A3. Insofar as A2 is concerned, it is brought to the notice of the Court that he was only 24 years old and he was actually a student at that time; that he was utilised by his father; that he had nothing to do with the Financial Institution, and he had no benefit from the said Financial Institution. The learned counsel for the appellants further stated that it cannot be stated that he was the Managing Director of the Firm and he had nothing to do with the collection amount. The lower court has awarded punishment of 10 years RI along with fine of Rs.1 lakh, in default, one year RI under Section 5 of TNPID Act to A2. Taking into consideration the age of the accused, the court is of the view that awarding punishment of six years R.I along with the fine awarded by the trial court as referred to above under Section 5 of TNPID Act would meet the ends of justice. Therefore, the sentence of 10 years RI under Section 5 of TNPID Act imposed by the lower court on A2 alone is reduced to six years R.I. In other respect, the judgment of the lower court is confirmed. With the above modification, this criminal appeal is dismissed.

Index : Yes
Internet : Yes
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To
1. The Special Judge, TNPID Cases, Madras
2. The Principal Judge, Chennai

3. The Superintendent, Central Prison, Vellore,
4. The Public Prosecutor, Madras
5. The Dy. Inspector of Police, Chennai-4
6. Mr.O.Srinath, Govt. Advocate(Criminal side)
High Court, Madras
7. The Sub Inspector of Police, Crime Branch
Egmore, Chennai-8.